UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KRIS HENKE, Plaintiff, v. LINENS N THINGS, et al., Defendants.	Civil No.08cv614-BEN(NLS) **ORDER VACATING EARLY NEUTRAL EVALUATION CONFERENCE DUE TO AUTOMATIC STAY OF CASE**

On May 5, 2008, Defendant Linen N Things, Inc. filed a Notice of Bankruptcy and Notice of Automatic Stay [Doc. No. 12] advising the Court of the May 2, 2008 filing of Chapter 11 bankruptcy by Defendant in United States Bankruptcy Court, District of Delaware, Case No. 08-10833(CSS). Defendant's pending bankruptcy petition operates as an automatic stay of this action pursuant to Title 11, United States Code, section 362(a).[1] The scope of the automatic stay is broad. *Assoc. of St. Croix Condominium Owners v. St. Croix Hotel Corp*., 682 F.2d 446, 448 (3d Cir. 1982). "All proceedings are stayed, including ... judicial proceedings. Proceeding in this sense encompasses civil actions...." *Id.* Once triggered, the automatic stay of an action pending against the Defendant-Debtor in district court

[1] 11 U.S.C. § 362(a) states in pertinent part:

"Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . ."

"continues until the bankruptcy case is closed, dismissed, or discharge is granted or denied, or until the bankruptcy court grants some relief from the stay." *Pope v. Manville Forest Products Corp.*, 778 F.2d 238, 239 (5th Cir. 1985); *see also In re De Jesus Saez*, 721 F.2d 848, 851-2 (1st Cir. 1983). Absent relief from the stay, judicial actions and proceedings against the debtor are void *ab initio*. *Kalb v. Feuerstein*, 308 U.S. 433, 438-40 (1940). Due to the fact that this litigation is currently stayed as to Plaintiff's claims against Defendant, the Court cannot compel Defendant to participate in the Early Neutral Evaluation conference ("ENE") currently scheduled for June 2, 2008. Accordingly, the ENE is **VACATED** until such time that the automatic stay is no longer in effect.

IT IS SO ORDERED.

DATED: May 7, 2008

Nita L. Stormes

Hon. Nita L. Stormes
U.S. Magistrate Judge